# National Labor Relations Board



# Weekly Summary of NLRB Cases

| Division of Information | Washington, D.C. 20570 | Tel. (202) 273-1991 |  |
|-------------------------|------------------------|---------------------|--|
|                         |                        |                     |  |
| July 2 2004             |                        | W-2954              |  |

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Press Releases (<u>R-2530</u>): Dorothy Wilson is Named Regional Attorney of NLRB's Memphis Regional Office

**CORRECTION:** In the June 18, 2004 issue (W-2952), regarding the summary of St. Barnabas Medical Center, 341 NLRB No. 151, on page 4, the hearing was held on Sept. 16, 2002, <u>not Sept. 16, 2001</u>.

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Brown and Drake Bay City LLC d/b/a Hereford & Hops Restaurant and Brew Pub (7-CA-46016; 342 NLRB No. 13) Bay City, MI June 25, 2004. The Board granted the General Counsel's motion for summary judgment and held that the Respondent violated Section 8(a)(1) of the Act by discharging employees Linda M. Lukowski and Lakeshia Washington and by promulgating and maintaining overbroad no-solicitation and confidentiality rules, and rules prohibiting the discussion of employees' tips. The Respondent failed to comply with the terms of a settlement agreement by failing to remit the agreed-upon backpay amounts due Lukowski and Washington. Pursuant to the noncompliance provisions of the settlement agreement, the Board found all of the allegations of the complaint are true and granted the General Counsel's motion for summary judgment. [HTML] [PDF]

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by Linda M. Lukowski; complaint alleged violation of Section 8(a)(1). General Counsel filed motion for summary judgment April 12, 2004.

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Cogburn Healthcare Center, Inc. (15-CA-13874, et al., 15-RC-7988; 342 NLRB No. 11) Mobile, AL June 21, 2004. Members Liebman and Walsh denied the Respondent's motion to reopen the record and for reconsideration of the Board's decision and order reported at 335 NLRB 1397 (2001), finding, in agreement with the administrative law judge, that a Gissel (NLRB v. Gissel Packing Co., 395 U.S. 575 (1969)) bargaining order was necessary to remedy the effects of the Respondent's extensive unfair labor practices. Member Schaumber, dissenting, would rescind the Gissel bargaining order based on the substantial passage of time between the 1996 election held in the representation case and the Board's 2001 decision and direct a new election. [HTML] [PDF]

The Respondent argued that changes in management and composition of the bargaining unit, as well as the passage of time, make the Board's *Gissel* order unnecessary and unenforceable. The majority decided that the Respondent's motion does not comply with Section 102.48(d)(1) of the Board's Rules and Regulations, finding, among others, that the motion is deficient and was untimely made. They also concluded that the passage of time does not render a bargaining order inappropriate, that the additional evidence the Respondent seeks to introduce does not require a different result, and that the Board provided an extensive analysis of the inadequacy of traditional remedies in the underlying decision.

(Members Liebman, Schaumber, and Walsh participated.)

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Electrical Workers IBEW Local 48 (Oregon-Columbia Chapter of NECA) (36-CB-1798-1, et al.; 342 NLRB No. 10) Portland, OR June 23, 2004. Chairman Battista and Member Schaumber held, contrary to the administrative law judge, that the Respondent violated Section 8(b)(1)(A) of the Act by departing from its hiring hall rules in dispatching dozens of employees out of order, some of which were handed out in connection with the Respondent's salting program. The majority held that the Respondent's deliberate preferential dispatching treatment was not

necessary to the effective performance of its representative function and that mistaken departures from its hiring hall rules "indicate reckless disregard for established procedures and employees' interests, and thus constitute gross negligence." [HTML] [PDF]

Member Walsh, dissenting in part, found that certain Respondent's practices were justifiable departures from the hiring hall rules in furtherance of its organizational efforts. "Since organizing is a vital part of the union's representative function, and since salting is a vital part of union organizing, the Union's rather modest uses of dispatching in furtherance of its organizational efforts here were necessary to the effective performance of its representative function," he explained.

The Respondent operates an exclusive hiring hall for journeyman and apprentice electricians under its contract with the Oregon-Columbia Chapter of NECA. The contractual rules include various requirements for registering in one of four groups, or "books." The four books comprise the out-of-work list, or OWL, from which job referrals are made.

Chairman Battista and Member Schaumber found that the Respondent violated the Act in various ways, including: (i) giving preferential dispatching treatment to salts—i.e., union members who take jobs with nonunion employers to engage in union organizing—and "peppers"—i.e., newly organized employees of nonunion employers who remain with those employers to engage in union organizing; (ii) returning, off the books, to their newly organized former employer, employees who had been "stripped"—i.e., persuaded to leave that employer and join the Union—during a union organizing campaign; sending discharged employees back to the dispatching employer off the books; (iii) permitting registrants to retain positions on the out-of-work list (OWL) despite having missed a compulsory biannual re-sign; (iv) dispatching registrants requested by name under circumstances where the collective-bargaining agreement does not permit a name-request dispatch; and (v) otherwise deliberately departing from the rules of its hiring hall where such a departure is neither pursuant to a valid union-security clause or necessary to the effective performance of its representative function.

Member Walsh would not find a violation for the Respondent's practices, among others, where: 1) salts were permitted to remain on the OWL during their salting employments with nonunion contractors, 2) salts and peppers were credited for their time with nonsignatory contractors for purposes of satisfying the "signatory 1 out of 4" rule—i.e., the requirement, for registering on book 1, of having worked 1 year out of the previous 4 with signatory employers; and 3) salts and peppers sometimes received dispatches without having registered on the OWL list. Member Walsh would also find no violation for returning "stripped" employees to their former employer, or for redispatching discharged employees in lieu of pursuing a grievance.

No exceptions were filed to the judge's findings concerning other 8(b)(1)(A) violations, some of which the judge found and some of which she dismissed. The Board adopted, in the absence of exceptions, the judge's findings in secs. II,B,4, 5, 6, II,C, D, and E of her decision.

(Chairman Battista and Members Schaumber and Walsh participated.)

Charges filed by various individuals; complaint alleged violation of Section 8(b)(1)(A). Hearing at Portland on various dates in 1998 and 1999. Adm. Law Judge Mary Miller Cracraft issued her decision April 21, 2000.

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Ethan Enterprises, Inc. (19-CA-28877; 342 NLRB No. 15) Mill Creek, WA June 24, 2004. The Board affirmed the administrative law judge's findings that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to execute, on request, the 2003-2004 master agreement it reached with Painters District Council #5; and refusing to provide the Union with requested information relevant and necessary to its responsibilities as exclusive representative of Respondent's employees, including names, addresses, phone numbers, job classification, hours of work, wage rates, and benefits information. [HTML] [PDF]

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by Painters District Council #5; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Seattle on December 4, 2003. Adm. Law Judge Jay R. Pollack issued his decision Jan. 16, 2004.

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International Masonry Institute (5-CA-29760; 342 NLRB No. 8) Baltimore, MD June 21, 2004. The Board adopted the administrative law judge's finding and dismissed the complaint allegation that the Respondent violated Section 8(a)(1) and (3) of the Act by threatening and eventually discharging employee Anthony Ficarri because he had engaged in union and concerted activities that are protected by Section 7 of the Act. [HTML] [PDF]

The Board noted that Ficarri's complaint about the Brice House job stemmed from his apparent general belief that the use of nonunion labor in renovating the Respondent's premises was inconsistent with the Respondent's philosophy and mission as a labor-management trust fund.

The Board held that the Respondent was not bound by a collective-bargaining agreement with a union-security clause, and Ficarri's complaint could not be reasonably understood as an effort to get the Respondent to recognize or enter into a collective-bargaining agreement with a union, or to implement or modify any term and condition of employment on the Brice House job. It found it unnecessary to address the judge's alternative findings.

(Chairman Battista and Members Schaumber and Meisburg participated.)

Charges filed by Anthony Ficarri, an individual; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Baltimore, Oct. 25-26, 2001. Adm. Law Judge David L. Evans issued his decision March 22, 2002.

Kelly Brothers Sheet Metal, Inc. (12-CA-22495, et al.; 342 NLRB No. 9) Tallahassee, FL June 21, 2004. Agreeing with the administrative law judge, the Board held that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging employees George Twiss and Robert Fernandez because of their activities for Sheet Metal Workers Local 435. Members Schaumber and Walsh affirmed the judge's finding that the Respondent also violated Section 8(a)(1) when its Project Manager Bobby Kelly threatened employees with the loss of job opportunities if they selected the Union as their bargaining representative, finding that the Respondent furnished no objective basis for claiming that unionization would adversely affect its operations. Chairman Battista, dissenting on this issue, found that Kelly's stated doubt about the continuing viability of the company "because there [weren't] that many union jobs around" was a lawful expression of his opinion about the possible effect of unionization. [HTML] [PDF]

(Chairman Battista and Members Schaumber and Walsh participated.)

Charges filed by Sheet Metal Workers Local 435; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Tallahassee, June 11-12, 2003. Adm. Law Judge Pargen Robertson issued his decision Sept. 3, 2003.

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Paragon Pattern & Mfg. Co., Inc. (7-CA-46022; 342 NLRB No. 17) Grand Rapids, MI June 25, 2004. The Board affirmed the administrative law judge's conclusion that the Respondent did not violate Section 8(a)(3) of the Act by laying off four employees. The judge found that the General Counsel established that the four alleged discriminatees engaged in the protected activity of speaking against the concessions that management considered necessary for the Company's survival, and that the Respondent showed that it would have laid off the four employees for lawful, economic reasons even in the absence of their protected activity. [HTML] [PDF]

The Board adopted, in the absence of exceptions, the judge's finding that the Respondent violated Section 8(a)(1) by threatening employees with reprisals or loss of employment because they opposed contract concessions sought by the Respondent in collective bargaining with Machinists Local PM 2848.

(Members Schaumber, Walsh, and Meisburg participated.)

Charge filed by William Russell, an individual; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Grand Rapids, Nov. 4-5, 2003. Adm. Law Judge Keltner W. Locke issued his decision Dec. 9, 2003.

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Reynolds Electric, Inc. (7-CA-44926; 342 NLRB No. 16) Warren, MI June 25, 2004. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(1) of the Act by laying off and later refusing to recall George Hebb V because of his protected

concerted activities in asking management about the prevailing wage rate. Chairman Battista and Member Schaumber, with Member Liebman dissenting, reversed the judge's finding that the Respondent violated Section 8(a)(1) by laying off and later refusing to recall Gabriel Rice. <a href="https://example.com/html/phf">[HTML] [PDF]</a>

The judge found that Rice had engaged in concerted activity when he individually raised the state-required prevailing wage with management and that the Respondent knew that he had done so. Assuming without deciding that the judge correctly found that Rice had engaged in concerted activity, Chairman Battista and Member Schaumber concluded that it has not been established that the Respondent knew of this concerted activity. Member Liebman found that the record supported a different factual conclusion, adding: "But even if it did not, this case illustrates why the knowledge requirement makes no sense, given the Act's goal of shielding employees who, like Rice, engage in concerted activity for their mutual aid or protection."

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Gabriel T. Rice, an individual; complaint alleged violation of Section 8(a)(1). Hearing at Detroit on Oct. 8, 2002. Adm. Law Judge Ira Sandron issued his decision Jan. 24, 2003.

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Sara Lee Bakery Group d/b/a International Baking Co. and Earthgrains (21-CA-35073, et al., 21-RC-20465; 342 NLRB No. 12) Vernon, CA June 25, 2004. The Board affirmed the administrative law judge's findings that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging employee Macario Robledo because of his activities for Bakery Workers Local 37 and violated Section 8(a)(1) and engaged in objectionable conduct by announcing a new paid holiday and gainsharing bonus program during the critical period. The Board noted the lack of evidence that the new paid holiday was even considered prior to the union organizing campaign or that the gainsharing bonus was a firmly developed program. It set aside the election held in Case 21-RC-20465 on July 9 and 10, 2002 (the Union lost 237-62) and remanded the case to the Regional Director to conduct a new election. [HTML] [PDF]

Chairman Battista disagreed with his colleagues' finding that the evidence failed to show that the gainsharing bonus was decided upon prior to the critical period and would dismiss the related complaint allegation and objection. He noted that "the gainsharing bonus was among the enhanced benefits that the Respondent listed in a corporate e-mail sent in March, demonstrating that the gainsharing bonus program was part of the postmerger benefits review, like the other enhanced or new benefits."

The judge dismissed, with Board approval, allegations that the Respondent's announcement of new or enhanced medical, life insurance, and retirement benefits and new company provided lockers and uniforms violated Section 8(a)(1).

(Chairman Battista and Members Liebman and Walsh participated.)

Charges filed by Bakery Workers Local 37; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Los Angeles, Aug. 25-28, 2003. Adm. Law Judge Gregory Z. Meyerson issued his decision Dec. 2, 2003.

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## LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

San Ramon Regional Medical Center, Inc. d/b/a San Ramon Regional Medical Center and Doctors Medical Center (California Nurses Association) San Ramon and San Pablo, CA June 18, 2004. 32-CA-20157, 20158; JD(SF)-49-04, Judge Gerald A. Wacknov.

*Indian River Memorial Hospital* (Teamsters Local 769) Vero Beach, FL June 22, 2004. 12-CA-23231, et al.; JD(ATL)-35-04, Judge Michael A. Marcionese.

Five Star Transportation, Inc. (Food & Commercial Workers Local 1459) Agawam, MA June 23, 2004. 1-CA-41158; JD-60-04, Judge Arthur J. Amchan.

CNP Mechanical, Inc. (Plumbers Local 13) Rochester, NY June 24, 2004. 3-CA-23731-2; JD-59-04, Judge Margaret M. Kern.

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#### NO ANSWER TO COMPLAINT

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the complaint.)

Arrow Die Cutting, Inc. (Manufacturing Production & Service Workers Local 24) (13-CA-41379-1, 41415-1; 342 NLRB No. 14) Broadview, IL June 24, 2004.

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# LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to Reports of Regional Directors or Hearing Officers)

## **DECISION AND CERTIFICATION OF REPRESENTATIVE**

*The George Washington University*, Washington, DC, 5-RC-15624, June 22, 2004 *Philly Gardens Realty Corp.*, Philadelphia, PA, 4-RC-20736, June 23, 2004 *Vistar*, Dallas, TX, 16-RC-10529, June 24, 2004

# (In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

## DECISION AND CERTIFICATION OF REPRESENTATIVE

Customer Information & Dispute Resolution, Brooklyn, NY 29-RC-10175, June 22, 2004

# **DECISION AND DIRECTION OF SECOND ELECTION**

Urban Services of America, Inc., Chicago, IL, 13-RC-21106, June 23, 2004

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(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Caliber Mechanical Prepping, Inc., Centerville, IL, 14-RC-12466, June 23, 2004 Vanguard Car Rental USA, Inc., Orlando, FL, 12-RD-966, June 23, 2004 Health Center of Greater Waterbury, Waterbury, CT, 34-RC-2078, June 23, 2004 Help Social Services Corp., New York, NY, 29-RC-10171, June 23, 2004 Mavis Tires Supply Corp., Yonkers, NY, 2-RC-22815, June 23, 2004 Point Park University, Pittsburgh, PA, 6-RC-12276, June 23, 2004 Kool Star and Volt Services Group, Orange, CA, 21-RC-20732, June 24, 2004

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#### Miscellaneous Board Orders

DECISION AND DIRECTION [that Regional Director open and count one ballot]

Alvan Motor Freight, Inc., Richfield, OH, 8-RC-16602, June 25, 2004